

### **Remarks**

Claims 1, 2, 5, 8-14, 16-18, 22, 23 and 41-44 are currently pending in the application. Applicant thanks the Examiner for deeming claims 1, 2, 5, 10-13, 18, 22, 23 and 41-44 to be allowable. Claims 1, 2, 8-12, 14 and 16 are amended herein. Amendments to claims 1, 2, 8, 9, 14, 16 are amended for clarity. Claims 10-12 are amended to clarify how the recited regulatory element and nucleic acid are linked. Support for this amendment can be found in the application as published at least at paragraph [0007]. No new matter is added by these amendments. Upon entry of the present amendments, claims 1, 2, 5, 8-14, 16-18, 22, 23 and 41-44 will be pending in this application.

It is submitted that no new matter has been introduced by the present amendments and entry of the same is respectfully requested.

### **The Rejection Under 35 U.S.C. § 112, Second Paragraph Should Be Withdrawn**

The Examiner has rejected several claims under 35 U.S.C. § 112, Second Paragraph. Applicant addresses each rejection in turn below.

The Examiner has rejected claim 14 as indefinite in the recitation of “said polynucleotide” because it is unclear whether the limitation refers to the polynucleotide of claim 1 or the isolated polynucleotide that hybridizes to the polynucleotide of claim 1. Office Action at page 2. Applicant has amended this limitation in each instance in claim 14 to “said isolated polynucleotide” to clarify that this limitation refers to the polynucleotide that hybridizes to the polynucleotide of claim 1. Applicant therefore respectfully requests that the Examiner withdraw this rejection of claim 14.

The Examiner has rejected claims 16 and 17 as indefinite in the recitation of “said SEQ ID NO:1,” for which there is insufficient antecedent basis. Applicant has amended claim 16 to recite “nucleotides 860-996 of SEQ ID NO:2,” which has proper antecedent basis, instead of “SEQ ID NO:1”. Claim 16 is thus definite, as is claim 17, which depends from claim 16. Applicant therefore respectfully requests that the Examiner withdraw this rejection of claims 16 and 17.

### **The Claim Objection Should be Withdrawn**

The Examiner has objected to claim 9, and suggests amending claim 9 to read:  
“... a fragment of nucleotides 710-996 of SEQ ID NO:2 wherein said fragment comprises

comprising nucleotides 850-996 of SEQ ID NO:2.” Applicant has so amended claim 9.  
Applicant therefore respectfully requests that the Examiner withdraw this objection to claim 9.

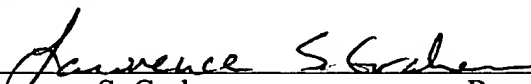
**CONCLUSION**

Applicant respectfully requests that the above amendments and remarks be entered in the present application file. An early allowance of the present application is respectfully requested. Should the Examiner have any concerns as to the allowability of any pending claim, or has concerns that any claim, as amended, would require further search, the Examiner is invited to contact the undersigned at 858-314-1171 or 858-314-1200 to discuss the matter to facilitate allowance of the application.

No fee, other than the extension of time fee, is believed due for this Amendment. However, if a fee is due, please charge such fee to Jones Day Deposit Account No. 50-2468.

Respectfully submitted,

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